IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shri Maheshwari Samaj Trust, Jodhpur v. The Commissioner, Devasthan Department, Udaipur and another

S.B.CIVIL WRIT PETITION NO.5873/1993
under Articles 226 and 227 of the Constitution of India.

Date of Order : 17th February, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.K.Thanvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

By an order dated 12.12.1990 the Assistant Commissioner, Devasthan, Jodhpur at his own motion after making an inquiry registered “Shri Maheshwari Samaj Jodhpur” as a public trust under the Rajasthan Public Trust Act, 1959 (hereinafter referred to as “the Act of 1959”). The Assistant Commissioner by treating Shri Maheshwari Samaj Jodhpur a “charitable endowment” registered it as public trust. The Commissioner, Devasthan by judgment dated 3.8.1993 affirmed the order dated 12.12.1990 passed by the Assistant Commissioner by rejecting the appeal preferred by Shri Maheshwari Samaj Jodhpur under Section 20 of the Act of 1959. Validity and propriety

of the order dated 12.12.1990 and the judgment dated 3.8.1993 is assailed by this petition for writ by Shri Maheshwari Samaj Jodhpur.

While giving challenge to the orders impugned it is urged that the Assistant Commissioner without having any evidence available treated petitioner society as a charitable endowment. It is also urged that the Assistant Commissioner, Devasthan failed to appreciate the aims and objects of the petitioner society while including it within the purview of charitable endowment formed for a charitable purpose. According to counsel for the petitioner Shri Maheshwari Samaj Jodhpur, a society registered under Registration of Societies Act, 1958 was formed only to regulate general conduct of persons belonging to Maheshwari community, to maintain property of the caste with a view to its general upliftment. There was no religious or charitable object behind its formation.

In written it is stated that the petitioner society availed tax relief under Land & Building Tax Act being a charitable society and it was formed with an object of providing aid to its members in their educational, mental, professional and physical development. The Assistant Commissioner, therefore, rightly registered it as a public trust. It is also stated that sufficient opportunity was given to the

petitioner to produce evidence but the same was not availed, therefore, on basis of objects averred in the constitution of Shri Maheshwari Samaj the was registered as a public trust.

Heard counsel for the parties.

The Assistant Commissioner, Devasthan, Jodhpur registered Shri Maheshwari Samaj Jodhpur as a public trust by treating it a charitable endowment on basis of two following objects mentioned in the constitution of samaj:-

"धारा नं. 3 उद्देश्य:-

(च) समाज के सदस्यों को आर्थिक व अन्य रूप से सहायता देना तथा उनके भरण, पोषण, शिक्षण, व्यवसायिक, मानसिक व शारीरिक विकास के लिए प्रयत्न करना।

(छ) भारत देश के किसी भाग में ईश्वरीय प्रकोप द्वारा अथवा अन्य विध्वंसात्मक कारण द्वारा आपत्ति आने पर सामुहिक अथवा व्ययेवित्तक रूप से आपत्ति पीड़ित मनुष्यों की सहायता करना।"

The Commissioner, Devasthan while rejecting the appeal preferred by the petitioner also held that in view of objects 3(cha) and 3(chha) the petitioner is a charitable endowment. Definition of term “charitable endowment” as prescribed under Section 3 (2) of the Act of 1959 reads as under:-

> “2(3)”Charitable endowment” means all property given or endowed for the benefit of, or used as of right by the community or any section thereof for the support of maintenance of objects of utility to the said community or section, such as rest houses, schools and colleges, houses for feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature and includes the institution concerned.”

According to the definition referred above a charitable endowment means property given or endowed for the benefit of, or used as of right by the community or any section thereof for the support of maintenance of objects of utility to the said community or section by establishing rest houses, educational institutions, houses and providing certain amenities to the poors. The property endowed or given for advancement of education, medical relief and public health or other natures of like nature also constitute charitable endowment. The object 3(cha) of the constitution of Shri Maheshwari Samaj pertains to the aid for its members with regard to their maintenance, educational development, professional development and for mental and physical development. It is true that the object referred above relates to the aid to the members of Shri Maheshwari Samaj for

their general development but whether it is a charity or not was required to be proved by evidence. The Assistant Commissioner while reaching on the conclusion that Shri Maheshwari Samaj is a charitable endowment was not equipped with any evidence. From perusal of the order dated 12.12.1990 it appears that certain objections were raised on behalf of the petitioner stating therein that it is neither a charitable nor a religious endowment and also that it does not come within the purview of public trust but those objections were not taken into consideration by the Assistant Commissioner being submitted after the dates given for raising objections. As a matter of fact the Inspector, Devasthan did not produce any evidence to establish that Shri Maheshwari Samaj Jodhpur is involved in any religious or charitable activity. The Assistant Commissioner on basis of assertion in clause 3(cha) treated the petitioner as a charitable endowment. While determining nature of a society/institution it is necessary to examine its functions, activities and objects. No evidence was produced before the Assistant Commissioner to establish the petitioner's charitable functions and activities. The evidence to prove that was much required in the present matter as the Assistant Commissioner initiated proceeding under the Act of 1959 at his own motion and the petitioner denied for its charitable or religious nature. The burden to prove that the petitioner is a charitable endowment

was upon the department. It is position admitted that no evidence was produced by the department, therefore, in fact the presumption drawn by the Assistant Commissioner on basis of object 3(cha) averred in constitution of Shri Maheshwari Samaj is not founded on evidence. The Commissioner, Devasthan also failed to appreciate that the finding given by the Assistant Commissioner was not supported by any evidence.

In view of whatever stated above, the orders impugned are declared illegal and, therefore, the same are quashed. No order as to costs.

The writ petition is allowed accordingly.

(GOVIND MATHUR),J.

kkm/ps.